

Notice of Allowability

Application No.

09/494,567

Examiner

Tonia L. Meonske

Applicant(s)

VORBACH ET AL.

Art Unit

2181

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE filed 2/6/2006.
2. ☒ The allowed claim(s) is/are 14, 15, 17, 21-24, 26-35 and 38-44.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 2/6/2006
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☒ Other Comments on IDS filed 2/6/2006.

Supervisor
FRITZ FLEMING
PRIMARY EXAMINER 6/22/2006
GROUP 2100
AG 4137

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed February 6, 2006 fail to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. Specifically see page 8, the 3rd, 9th and 22nd citations (See attached IDS form considered by examiner.). It has been placed in the application file, but the information referred to therein has not been considered.

2. The information disclosure statement filed February 6, 2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Specifically see page 7, the 7th, 9th, 20th and 24th citations, and page 8, the 4th, 11th and 19th citations, (See attached IDS form considered by examiner.). It has been placed in the application file, but the information referred to therein has not been considered.

3. The information disclosure statement filed February 6, 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because

- a. According to 1.98 (b)(1), "*Each U.S. patent listed in an information disclosure statement must be identified by inventor, patent number, and issue date.*" On page 4, the 17th citation has been identified with an improper date (See attached IDS form considered by examiner.).

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- b. According to 1.98 (b) (4), *"Each foreign patent or published foreign patent application listed in an information disclosure statement must be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application."* On page 5, the 7th citation has been identified with an improper date (See attached IDS form considered by examiner.).
- c. According to 1.98 (b) (4), *"Each publication listed in an information disclosure statement must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication."*
- i. The following citations are identified with improper page numbers: page 6, the 21st citation and page 7, the 19th citation (See attached IDS form considered by examiner.).
- ii. The following citations are not identified with relevant page numbers: Page 6, the 22nd citation, and page 7, the 2nd, 6th, 8th, 10th, 11th, 12th citations (See attached IDS form considered by examiner.).
4. It has been placed in the application file, but the information referred to therein has not been considered as to the merits with respect to the citations mentioned above. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

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Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonia L. Meonske whose telephone number is (571) 272-4170.

The examiner can normally be reached on Monday-Friday, with every other Friday off.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fritz Fleming can be reached on (571) 272-4145. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tlm

Fritz Fleming
Supervisory
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PRIMARY EXAMINER 6/22/2006
GROUP 2100
AULI81